IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

GRACIANO GONZALEZ-RODRIQUEZ, Plaintiff,	)	
v.	)	C.A. No.: N18C-12-162 VLM
FELIPE SOTO and NATIONAL FIRE INSURANCE COMPANY OF HARTFORD, Defendants.	)	

MEMORANDUM OPINION

Submitted: November 16, 2020
Decided: March 15, 2021

Upon Consideration of Defendant's Motion to Dismiss,
GRANTED.

Joel Fredricks, Esquire of Weik, Nitsche & Dougherty, LLC, Wilmington, Delaware. *Attorney for Plaintiff.*

Jessica L. Tyler, Esquire of Marshall, Dennehey, Warner, Coleman & Goggin, Wilmington, Delaware. *Attorney for Defendant National Fire Insurance Company of Hartford.*

MEDINILLA, J.

I. INTRODUCTION

Plaintiff Graciano Gonzalez-Rodriguez brings a reformation action against National Fire Insurance Company of Hartford seeking to challenge his employer's election to reject its uninsured/underinsured motorist ("UM/UIM") coverage under 18 *Del. C.* § 3902.[1] Defendant National Fire Insurance Company of Hartford seeks dismissal under Superior Court Civil Rule 12(b)(6). For the reasons set forth below, upon consideration of Defendant's Motion to Dismiss, Plaintiff's Response in Opposition, oral arguments, supplemental submissions, and the record in this case, Defendant National Fire Insurance Company of Hartford's request for dismissal must be **GRANTED.**

II. FACTUAL AND PROCEDURAL BACKGROUND

This case arises out of a personal injury action brought by Plaintiff Graciano Gonzalez-Rodriguez ("Plaintiff") against Defendant Felipe Soto ("Defendant Soto") for bodily injuries he alleges he sustained in a motor vehicle accident that occurred on or about March 3, 2017.[2] At the time of the accident, Plaintiff was acting within the scope of his employment for his former employer Tri-State The Roofers ("Tri-

[1] 18 *Del. C.* § 3902.
[2] Plaintiff's Amended Complaint, D.I. 6, ¶¶ 3-7 [hereinafter Plaintiff's Amended Complaint].

State.")[3] He was traveling as a passenger in a Tri-State owned vehicle,[4] operated by Robert Charles Riley.[5] Plaintiff alleged that Defendant Soto attempted to make a right turn, pulled directly into the path of Riley, and struck the vehicle.[6] On December 13, 2018, Plaintiff filed a Complaint against Defendant Soto alleging negligence.[7] Defendant Soto's liability carrier tendered its policy limits of $25,000.[8]

Tri-State is insured through National Fire Insurance Company of Hartford ("Defendant"). On March 26, 2019, Plaintiff filed an Amended Complaint adding Defendant, alleging that Defendant Soto's policy limits were insufficient to compensate him for his damages, and seeking underinsured motorist coverage through Tri-State's UM/UIM policy.[9]

Defendant entered into a commercial policy for automobile insurance with Tri-State on April 30, 2008.[10] Under the policy, Tri-State is listed as the named-insured,[11] and had rejected all UM/UIM coverage.[12] Accordingly, on June 12, 2019, Defendant filed this Motion to Dismiss Plaintiff's Amended Complaint under

[3] *See* Defendant's Opening Brief in Support of its Motion to Dismiss, D.I. 20, at 1 [hereinafter Def's Opening Brief]; Plaintiff's Response in Opposition to Defendant's Motion to Dismiss, D.I. 24, ¶ 1 [hereinafter Plaintiff's Response].
[4] Plaintiff's Response, ¶ 1.
[5] Amended Complaint, ¶ 4.
[6] *Id.* ¶ 5.
[7] Related to this accident, Plaintiff also made a claim for workers' compensation benefits and for personal injury protection (PIP) benefits through Tri-State.
[8] Plaintiff's Amended Complaint, ¶ 8.
[9] *Id.* ¶ 7.
[10] Def's Opening Brief, at Appendix Ex. A.
[11] *Id.*
[12] *Id.*

Superior Court Civil Rule 12(b)(6) for failure to state a claim, asserting Plaintiff lacks standing to reform Tri-State's insurance policy.[13]

Following the parties' briefing and oral arguments, Plaintiff argued dismissal would be premature where Defendant had not yet provided written discovery related to the complete underwriting file for the insurance policy. The question of whether the insurance contract that began in 2008 had been cancelled (or lapsed and then reinstated) required an answer to determine the applicability of § 3902(a) or (b); the interaction of the contracting parties (i.e., standing) may be irrelevant under subsection (a).[14]

The Court allowed for limited discovery related to the underwriting file for Defendant's policy dating from 2008 to 2017.[15] Supplemental briefs were filed,[16] including Defendant's submission that included an affidavit from Francis Sanna, a co-owner of Tri-State confirming no intent to purchase UM/UIM coverage.[17] Oral arguments were heard on November 16, 2020.[18] The matter is ripe for decision.

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[13] *See* Defendant's Motion to Dismiss, D.I. 16, ¶ 7.

[14] Plaintiff argued that if the policy lapsed or was cancelled and then reinstated, the policy would be considered a new policy and Defendant would need to produce a written rejection of the UM/UIM coverage relevant to that new policy. If Defendant could not produce such written rejection, Plaintiff further argued that Defendant violated the statute, and coverage would be available without the need to conduct a reformation analysis.

[15] *See* Order, D.I. 38.

[16] *See* Plaintiff's Supplemental Brief, D.I. 40.

[17] *See* Defendant's Supplemental Brief, D.I. 44, Exhibit C.

[18] Oral arguments were postponed to November 2020 in part initially due to court closures as a result of the COVID-19 pandemic and later at the request of Defendant's counsel who was out on maternity leave.

III. CONTENTION OF THE PARTIES

Defendant argues Plaintiff cannot assert claims for UM/UIM coverage where Tri-State, the named insured under the contract, rejected the coverage.[19] Defendant further argues that Plaintiff lacks standing to reform the contract because he is neither the policyholder nor the named insured.[20] Defendant argues in the alternative that if the Court finds that Plaintiff does have standing, reformation is not a viable remedy where Defendant presented a meaningful offer to Tri-State under 18 *Del. C.* § 3902(b).[21]

Plaintiff challenges the legality of any rejection of UIM coverage. Though not alleged in the Amended Complaint, upon learning of the absence of UIM coverage, he contends Defendant failed to make meaningful offers of UIM coverage to Tri-state initially and upon any material change to the policy since 2008.[22] He further argues that a reasonable interpretation of "named insured" includes him, with standing to reform the contract.[23] He advances the theory that Tri-State is an artificial entity that cannot sustain bodily injury from collisions that would necessitate protection under Defendant's insurance contract. And the entity represents a group of people, including its employees. Since the entity did not

[19] Def's Opening Brief, at 6.
[20] *Id.* at 7.
[21] Defendant's Supplemental Brief, D.I. 44, at 4.
[22] Plaintiff's Response, ¶ 2.
[23] *Id.* ¶ 8.

specify who it meant as the "named insured," Plaintiff posits the employees for whom the insurance coverage was obtained should have standing to reform the policy if the insurer violated Delaware law in failing to provide a meaningful offer of UIM coverage.[24]

IV. STANDARDS OF REVIEW

The parties do not bring this action as a declaratory judgment action. Instead, Defendant seeks dismissal under Rule 12(b)(6). As such, the Court may dismiss a complaint for "failure to state a claim upon which relief can be granted."[25] When a motion for failure to state a claim presents matters outside of the pleadings, "the motion shall be treated as one for summary judgment. . . and all parties shall be given reasonable opportunity to present all materials pertinent to such a motion . . . ."[26]

Upon Plaintiff's request, the Court accepted that limited discovery would assist in determining the applicability of 18 *Del. C.* § 3902 (a) or (b) specifically on the issue of standing.[27] Thus, the parties had ample notice[28] that matters outside of

[24] Plaintiff's Response, ¶ 8.
[25] DEL. SUPER. CT. CIV. R. 12(b)(6).
[26] DEL. SUPER. CT. CIV. R. 12(b); *see also Brown v. Colonial Chevrolet Co.*, 249 A,2d 439, 441 (Del. Super. 1968).
[27] Defendant produced non-UM/UIM policy documents that may have confused the issue of whether the UM/UIM policy had been cancelled or reinstated. Following oral arguments, it was determined that § 3902(b) applied. Therefore, the Court does not address § 3902(a).
[28] DEL. SUPER. CT. CIV. R. 12(b) ("[A]ll parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56."); *Appriva Shareholder Litig. Co., v. EV3, Inc.*, 937 A.2d 1275, 1288 (Del. 2007) ("[T]he Superior Court must give the parties at least ten days notice of its intent to convert a Rule 12(b)(6) motion to dismiss into a Rule 56 motion for summary judgment.").

the pleadings would be considered, and in fact, Defendant included an affidavit from Francis Sanna, a co-owner of Tri-State confirming no intent to purchase UM/UIM coverage.[29] Thus the issue of whether Plaintiff has standing to reform the contact shall be considered pursuant to the summary judgment standard under Rule 56.

Accordingly, a Court shall grant summary judgment when the moving party demonstrates that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.[30] If the moving party satisfies its initial burden, the non-moving party must sufficiently establish the "existence of one or more genuine issues of material fact."[31] "All facts and reasonable inferences must be considered in a light most favorable to the nonmoving party."[32]

Summary judgment will not be granted if there is a material fact in dispute or if "it seems desirable to inquire thoroughly into [the facts] in order to clarify the application of the law to the circumstances."[33] While the Court may not be able to grant summary judgment "if the factual record has not been developed thoroughly enough to allow the Court to apply the law to the factual record,"[34] "a matter should

[29] *See* Defendant's Supplemental Brief, D.I. 44, Exhibit C.
[30] DEL. SUPER. CT. CIV. R. 56(c).
[31] *Quality Elec. Co., Inc. v. E. States Const. Serv., Inc.*, 663 A.2d 488, 1995 WL 379125, at *3-4 (Del. 1995) (TABLE).
[32] *Nutt v. A.C. & S. Co., Inc.*, 517 A.2d 690, 692 (Del. Super. 1986) (citing *Mechell v. Plamer*, 343 A.2d 620, 621 (Del. 1975)).
[33] *Ebersole v. Lowengrub*, 180 A.2d 467, 469-70 (Del. 1962).
[34] *CNH Indus. Am. LLC, v. Am. Casualty Co. of Reading*, 2015 WL 3863225, at *1 (Del. Super. June 8, 2015).

be disposed of by summary judgment whenever an issue of law is involved and a trial is unnecessary."[35]

Here, it is not for this Court to determine whether a factual dispute arises regarding Defendant's compliance with the provisions 18 *Del. C.* §3902(b) or the legality of Tri-State's rejection of its UM/UIM coverage. The issue is simply whether Plaintiff is entitled to make such challenge.

V. DISCUSSION

The term "standing" concerns the "rights of a party to invoke the jurisdiction of a court to enforce a claim or redress a grievance."[36] The question of whether a party has standing must be answered by the court in the affirmative to "ensure that the litigation before [it] is a 'case or controversy' that is appropriate for the exercise of the court's judicial powers."[37] The standing issue is only concerned with "the question of *who* is entitled to mount a legal challenge and not with the merits of the subject matter in controversy."[38]

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[35] *Jeffries v. Kent Cty. Vocational Tech. Sch. Dist. Bd. of Educ.*, 743 A.2d 675, 677 (Del. Super. 1999); *Brooke v. Elihu-Evans*, 1996 WL 659491, at *2 (Del. 1996) ("If the Court finds that no genuine issues of material fact exist, and the moving party has demonstrated his entitlement to judgment as a matter of law, then summary judgment is appropriate.").
[36] *Stuart Kingston, Inc. v. Robinson*, 596 A.2d 1378, 1382 (Del. 1991) (citing 59 Am.Jur.2d *Parties* § 30 (1989)).
[37] *Dover Historical Soc'y v. City of Dover Planning Comm'n*, 838 A.2d 1103, 1110 (Del. 2003).
[38] *Id.* (quoting *Stuart Kingston, Inc.*, 596 A.2d 1382) (internal quotations omitted) (emphasis in the original).

To establish standing under the Federal Constitution a plaintiff must show: (1) that he has suffered an injury in fact – "an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent;" (2) there is a casual connection between the injury and the conduct complained of; and (3) it is likely that the injury will be redressed by a favorable decision.[39]

Our Supreme Court has recognized that the requirements to establish standing in the federal courts are "generally the same as the standards for determining standing to bring a case or controversy within the courts of Delaware."[40] "Unlike the federal courts, where standing may be subjected to stated constitutional limits, state courts apply the concept of standing as a matter of self-restraint to avoid the rendering of advisory opinions at the behest of parties who are 'mere intermeddlers.'"[41]

A. PLAINTIFF IS NOT A CONTRACTING PARTY UNDER SECTION 3902(b)

Under Delaware law, "UM/UIM insurance is 'personal' to the insured and not vehicle specific."[42] The law "permits this personal coverage to be reformed to the maximum amount permitted by law in the event the insurer did not offer the insured

[39] *Dover Historical Soc'y*, 838 A.2d at 1110 (quoting *Soc'y Hill Towers Owners' Ass'n v. Rendell*, 210 F.3d 168, 175-76 (3d. Cir. 2000)).
[40] *Id.* (citing *Oceanport Indus., Inc. v. Wilm. Stevedores, Inc.*, 636 A.2d 892, 904 (Del. 1994)).
[41] *Id.* (quoting *Stuart Kingston, Inc.*, 596 A.2d at 1382).
[42] *Davis v. State Farm Mut. Auto. Ins. Co.*, 2011 WL 1379562, at *5 (Del. Super. Feb. 5, 2011) (citing *Frank v. Horizon Assurance Co.*, 553 A.2d 1199 (Del. 1989)).

the opportunity to purchase the higher coverage."[43] Section 3902(b) of Title 18 reads, in pertinent part,

> Every insurer shall offer *to the insured* the option to purchase additional coverage for personal injury or death up to a limit of $100,000 per person and $300,000 per accident or $300,000 single limit, but not to exceed the limits for bodily injury liability set forth in the basic policy. Such additional insurance shall include underinsured bodily injury liability coverage.

Echoing the rationale in *Shukitt v. United Services Automobile Association* behind § 3902(b)'s purpose:

> An objective of § 3902(b) is to give those who carry liability coverage in excess of the minimum statutory amount the full opportunity to carry uninsured (and now underinsured) coverage in an equal amount. The duty which is imposed by statute is the duty to offer such insurance so that *the insured* can make an informed decision. An informed decision can be made only if all of the facts reasonably necessary for a person to be adequately informed to make a rational, knowledgeable and meaningful determination have been supplied.
>
> The prospect of overbearing is sufficiently great that section 3902(b) was enacted to require dissemination of important information which many consumers, other than the most diligent, might not discover.[44]

Section 3902(b)'s purpose is straightforward. It is intended to ensure information is adequately provided to those that must make contractual decisions

[43] *Davis*, 2011 WL 1379562, at *7 (citing *State Farm Mut. Auto. Ins. Co. v. Arms*, 477 A.2d 1060, 1065-66 (Del. 1984)).
[44] 2003 WL 22048222, at *3 (Del. Super. Aug. 13, 2003) (internal quotations and citations omitted).

regarding policy coverage. To carry out this purpose, "Delaware courts have strictly enforced Section 3902(b)'s requirement that insurance carriers clearly communicate offers of additional UM/UIM coverage to their *policyholders*."[45] It stands to reason then that the right to reform such contractual decisions regarding policy coverage "belongs to the person who contracted for the insurance in the first place, not to someone who would be covered under the policy if the contracting party exercises that right."[46] A plaintiff's status as a third-party beneficiary under the insurance contract alone will not confer standing to reform the contract.[47]

It is undisputed that Plaintiff was not the contracting party for the UM/UIM contract and made no decisions regarding the coverage he now wishes to reform. He was not the policyholder. He is a former employee. At the time of the accident, he did not serve as an officer, owner, nor act in any capacity as a representative of Tri-State. Therefore, there is no genuine issue of material fact regarding Plaintiff's status in the company as he was neither a policyholder nor a contracting party. The next question is whether he has standing to reform as a *named insured* under § 3902(b). That question must be answered in the negative.

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[45] *Brintzenhoff v. Hartford Underwriters Ins. Co.*, 2004 WL 2191184, at *1 (Del. Super. June 4, 2004) (quoting *Shukitt*, 2003 WL 22048222, at *3))(emphasis added.).
[46] *Garnett v. One Beacon Ins. Co.*, 2002 WL 1732371, at *4 (Del. Super. July 24, 2002); *see also Metro. Prop. & Liab. Ins. v. Nationwide Gen. Ins. Co.*, 1987 WL 14868, at *1 (Del. Super. July 15, 1987); *Menefee v. State Farm Mut. Auto. Ins.*, 1986 WL 6590, at *2 (Del. Super. May 28, 1986) (citing 59 Am. Jur. 2d, Parties, § 26).
[47] *Garnett*, 2002 WL 1732371, at *2; *see also Menefee*, 1986 WL 6590, at *2.

B. PLAINTIFF EMPLOYEE IS NOT A NAMED INSURED UNDER SECTION 3902(b)

As an employee, Plaintiff elected to make a worker's compensation claim against Tri-State, his employer. As a passenger in a Tri-State vehicle, he also made an appropriate personal injury protection claim (PIP) as a covered insured (not named insured) related to this accident. As to either claim, he did not challenge Tri-State's capacity to enter into those insurance contracts, nor did he dispute anything related to the coverage afforded him as a result of those decisions.

Dissatisfied with Tri-State's decision to reject UIM coverage, though he concedes no authority to contract, he argues a right to reform that which was negotiated. In so doing, Plaintiff asks this Court revisit *Amalfitano v. Salemi* to determine whether reformation may be sought by persons meant to be covered by the policy if the contracting party or "named insured" is an artificial or government entity.[48]

In *Amalfitano*, the plaintiff was injured in a motor vehicle collision by an uninsured tortfeasor.[49] At the time of the collision, the plaintiff was a State of Delaware employee in the course and scope of her employment and was occupying a vehicle owned and insured through the State of Delaware.[50] As the State had a lower limit of uninsured motorist ("UM") coverage than the liability limit, the

[48] *See Amalfitano v. Salemi*, 1986 WL 6593 (Del. Super. May 23, 1986).
[49] *Id.* at *1.
[50] *Id.*

plaintiff sought to reform the contract arguing the insurer failed to make the mandatory offer of additional UM coverage.[51] The Court stated that it seemed logical "that State employees who are injured by uninsured motorists and who are, in fact, the individuals the uninsured motorist coverage was intended to protect, have standing to sue on that coverage" because the named insured, i.e. the State of Delaware, would "not be driving any vehicles."[52] Plaintiff argues unsuccessfully that the same rationale applies here.

First, Plaintiff is incorrect when he states in his pleadings that the insurer in *Amalfitano* argued the plaintiff did not have standing.[53] That Court was faced with the question of whether the State's insurer made or had to make the mandatory offer of additional uninsured vehicle coverage and whether the State had rejected that offer.[54] Though *Amalfitano* briefly mentioned standing, the Court did not decide it as neither party raised it.[55]

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[51] *Amalfitano*, 1986 WL 6593, at *1.
[52] *Id.*
[53] Plaintiff's Response, ¶ 5.
[54] *Amalfitano*, 1986 WL 6593, at *1.
[55] *See id.* ("The question is whether PMA made or had to make the mandatory offer of additional uninsured vehicle coverage and whether the State of Delaware rejected that offer so as to preclude PMA's liability beyond $25,000"); *see also Garnett*, 2002 WL 1732371, at *3 (implying the issue of standing was never decided in *Amalfitano*); *Metro. Prop. & Liab. Ins. Co.*, 1987 WL 14868 at *2 (stating that standing was "neither raised or decided by the Court" in *Amalfitano*); *Malone v. United States Fid. & Guar. Co.*, 1987 WL 18107, at *2 (Del. Ch. Oct. 5, 1987) ("In *Amalfitano* . . . the Superior Court held that a state employee, as the driver of the state owned vehicle, was an 'insured' under the terms of the policy *but only because the carrier had so agreed*") (emphasis added).

Further, post-*Amalfitano,* the Court in *Sczubelek v. Maahs* rejected the idea that an employee of the State of Delaware had standing to reform an insurance contract where the State of Delaware was the named insured.[56] Since this Court finds that the issue of standing was not raised or decided in *Amalfitano* and there is no case law to support Plaintiff's position that an employee can be considered a named insured with rights to reformation, the reasoning in *Amalfitano* does not apply here.

Plaintiff's last nuanced argument takes it a step beyond *Amalfitano.* He suggests that where Tri-State's policy fails to limit or define the entity to a specific class of individuals of the company, and he was an employee of Tri-State, then the "named insured" must include him. Yet he cites no authority to support his position. Nor can the Court conceive placing such an onus on an entity, where the failure to define or limit its named insured, would somehow vest reformation rights onto its employees. Where 18 *Del. C.* § 3902(b) is concerned with ensuring *the insured* can make an informed decision, contract principles mandate that an equitable remedy such as reformation is exclusive to the contracting party that made the decision in the first place. The right to reform lies with Tri-State.[57] Plaintiff fails to establish a

[56] *Sczubelek v. Maahs*, 1986 WL 15440, at *2 (Del. Super. Dec. 12, 1986) (finding that a State Trooper did not have "standing to seek a declaration that PMA [was] required to offer additional uninsured vehicle coverage about the $25,000 limit in the policy . . .").

[57] Even if the Court had determined Plaintiff had standing to challenge, and *assuming arguendo* that no meaningful offer had been made by Defendant, the remedy under § 3902(b) would have

legal basis to hold otherwise. To find in his favor would upend basic principles of contract law far beyond the intended scope of 18 *Del. C.* § 3902(b).

VI. CONCLUSION

On this motion converted to one for summary judgment, there exists no genuine issue of material fact where Plaintiff is not the named insured nor the policyholder of the Tri-State commercial automobile policy through Defendant. Plaintiff's status as employee does not confer upon him reformation rights as a matter of law. Therefore, he lacks standing to challenge whether Defendant made a meaningful offer to Tri-State for UM/UIM coverage under 18 *Del. C.* § 3902(b). Accordingly, Defendant's Motion to Dismiss is **GRANTED**.

IT IS SO ORDERED.

/s/Vivian L. Medinilla
Vivian L. Medinilla
Judge

cc: All Counsel via File and Serve

been to allow the offer to remain open to Tri-State, not Plaintiff. Tri-State attests it rejected Defendant's offer in writing twice since 2008.